

Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matter of)
)
Request for Review of the)
Decision of the)
Universal Service Administrator by)
)
Delano Union Elementary School District)
Delano, California)
)
Federal-State Joint Board on)
Universal Service)
)
Changes to the Board of Directors of the)
National Exchange Carrier Association, Inc.)

File No. SLD-124472

CC Docket No. 96-45 ✓

CC Docket No. 97-21

ORDER

Adopted: April 12, 2001

Released: April 13, 2001

By the Accounting Policy Division, Common Carrier Bureau:

1. The Accounting Policy Division has under consideration a Request for Review filed by Delano Union School District (Delano Union), Delano, California.¹ Delano Union seeks review of a funding commitment decision issued by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) pursuant to funding requests for internal connections.² For the reasons set forth below, we remand Delano Union's application to SLD for further consideration.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant

¹ Letter from Ronald A. Garcia, Delano Union School District, to Federal Communications Commission, filed June 9, 2000 (Request for Review).

² Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sam Thompson, Delano Elementary School District, issued September 14, 1999 (Funding Commitment Decision Letter); Letter from Schools and Libraries Division, Universal Service Administrative Company, to Sam Thompson, Delano Union Elementary School District, issued May 11, 2000 (Administrator's Decision on Appeal).

³ 47 C.F.R. §§ 54.502, 54.503.

submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its technological needs and the services for which it seeks discounts.⁴ Once the applicant has complied with the Commission's competitive bidding requirements and entered into an agreement for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carrier with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ Approval of the application is contingent upon the filing of FCC Form 471, and funding commitment decisions are based on information provided by the school or library in this form.

3. Applicants may only seek support for eligible services.⁶ The instructions for the FCC Form 471 clearly state: "YOU MAY NOT SEEK SUPPORT ON THIS FORM FOR INELIGIBLE SERVICES."⁷ In addition, SLD's web site contains a list of eligible services and information on how to file an application.⁸ Although SLD reduces a funding request to exclude the cost of ineligible services in circumstances where the ineligible services represent less than 30 percent of the total funding request, SLD will deny a funding request in its entirety if ineligible services constitute more than thirty percent of the total.⁹ An applicant can avoid denial

⁴ 47 C.F.R. § 54.504 (b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ 47 C.F.R. § 54.504 *et seq.*

⁷ Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471) (December 1998) at 15 (Form 471 Instructions).

⁸ See SLD web site, <<http://www.sl.universalservice.org>>; see Instructions for Completing the Schools and Libraries Universal Service Services Ordered and Certification Form (FCC Form 471 Instructions), OMB Approval No. 3060-0806 (December 1998).

⁹ See *Request for Review of the Decision of the Universal Service Administrative Company by Uby Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 00-1517 (Com. Car. Bur. rel. July 10, 2000); *Request for Review of the Decision of the Universal Service Administrator by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, DA 00-2630, para. 8 (Com. Car. Bur. rel. November 24, 2000). The "30 percent policy" is not a Commission rule, but rather is an SLD operating procedure established pursuant to FCC policy. See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998). This operating procedure, used during SLD's application review process, enables SLD to efficiently process requests for funding for services that are eligible for discounts but that also include some ineligible components. If 30 percent or less of the request is for funding of ineligible services, SLD normally will consider the application and issue a funding commitment for the eligible services. If more than 30 percent of the request is for funding of ineligible services, SLD will deny the funding request in its entirety. The 30 percent policy allows SLD to efficiently process requests for funding that contain only a small amount of ineligible services without expending significant fund resources working with applicants that are requesting funding of ineligible services.
(continued....)

by subtracting out, at the time of its initial application, the cost of ineligible services. If the filing window has not closed and an applicant wishes to change the equipment that it is requesting, then the applicant must submit a new FCC Form 471 and cancel the previous request.¹⁰

4. The instant appeal arises from SLD's denial of Delano Union's Year 2 application for discounted internal connections, Funding Request Numbers (FRNs) 180789, 180800, 180809, 180818, 180826, 180833, 180846 and 180854, on the grounds that a significant portion of Delano Union's funding requests included products that were ineligible for discounts. On September 14, 1999, SLD denied funding for the requested internal connections, stating that the requests were denied because 30 percent or more of the FRNs included requests for ineligible products and services.¹¹ Delano Union filed an appeal with SLD on October 7, 1999.¹² In its SLD Letter of Appeal, Delano Union claimed that, prior to the funding commitment decision, it learned that video equipment was not eligible for funding under the schools and libraries universal support mechanism and submitted a revised equipment list.¹³

5. SLD denied Delano Union's appeal on January 31, 2000.¹⁴ In its denial letter, SLD explained that in FRNs 180789 and 180800, the funding requests included more than 30 percent of ineligible services. The FRNs included a Dukane SmartSystem which SLD found ineligible for funding under the universal service fund program. In addition, SLD explained that FRNs 180809, 180818, 180826, 180833, 180846, 180854 were denied because the requests included a Y2K upgrade of a file server which is also ineligible under the universal service fund program. Delano Union then filed the instant Request for Review with the Commission on June 9, 2000.¹⁵

6. In its Request for Review, Delano Union again states that it submitted a revised equipment list to SLD prior to the initial review. In addition, Delano Union seeks to amend its application by attaching another list of equipment from which it removed ineligible equipment and services. To the extent that Delano Union sought to revise its application with SLD,¹⁶ and now seeks to amend its request by attaching another list of equipment to its Request for Review, (Continued from previous page) _____

¹⁰ *Id*

¹¹ Funding Commitment Decision Letter.

¹² Letter from Sam Thompson, Delano Union Elementary School District, to Schools and Libraries Division, Universal Service Administrative Company, filed October 13, 1999 (SLD Letter of Appeal).

¹³ SLD Letter of Appeal.

¹⁴ Administrator's Decision on Appeal at 1.

¹⁵ Request for Review.

¹⁶ We note that SLD has no record of receipt of the revised list Delano states that it sent to SLD.

such actions are impermissible, because they are inconsistent with program rules. We cannot allow Delano Union to amend its original application to eliminate ineligible services from its funding request.¹⁷ SLD has established a policy that applicants are not permitted to amend completed FCC Forms 471 to remove ineligible service requests after the closure of the filing window.¹⁸ If the filing window has not closed and an applicant wishes to change the equipment that it is requesting, then the applicant must submit a new FCC Form 471 and cancel the previous request.¹⁹ This policy imposes upon applicants the responsibility of preparing their applications carefully and obtaining appropriate assistance to avoid including ineligible expenses.²⁰ If applicants were permitted to correct their applications after SLD has denied them, it would eliminate any incentive for them to avoid including ineligible expenses in their funding requests. This would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud. In light of the thousands of applications that SLD reviews and processes each funding year, administrative necessity requires that each applicant be responsible for providing complete and accurate information in its FCC Form 471 upon which its ultimate funding is dependent. The applicant must act to ensure that its request for discounts satisfies program rules, which limit universal service mechanism funds to eligible services only.²¹

7. In light of the program's rule discussed above, the "revised lists" that Delano Union attempted to present on appeal may not be considered on remand. We find, however, that Delano Union's original application should be remanded to SLD for further consideration. Video equipment is eligible to the extent that it is necessary to transmit or transport information to the classroom.²² SLD's Eligible Services list has recently been updated to clarify those video

¹⁷ See Request for Review.

¹⁸ The Commission's rules require that applicants file a completed Form 471 by the filing window deadline to be considered pursuant to the funding priorities for "in-window" applicants. 47 C.F.R. §§ 54.504(c), 54.507(c).

¹⁹ See *Request for Review of the Decision of the Universal Service Administrative Company by Ubyly Community Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45 and 97-21, Order, DA 00-1517 (Common Carrier Bur. rel. July 10, 2000); *Request for Review of the Decision of the Universal Service Administrator by Anderson School, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-133664, CC Docket Nos. 96-45 and 97-21, Order, DA 00-2630 (Com. Car. Bur. rel. November 24, 2000).

²⁰ Assistance is available to applicants from many sources, including SLD's website.

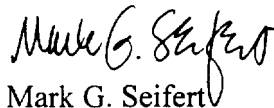
²¹ 47 C.F.R. § 54.504 *et seq.*

²² 47 C.F.R. §§ 54.1, 54.506, *see also*, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9079, para. 426-427, 459 (1997) (*Universal Service Order*), as corrected by *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Errata, FCC 97-157 (rel. June 4, 1997), *affirmed in part in Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393 (5th Cir. 1999), *motion for stay granted in part* (Sept. 28, 1999), *petitions for rehearing and rehearing en banc denied* (Sept. 28, 1999) (affirming *Universal Service Order* in part and reversing and remanding on unrelated grounds), *cert. denied in Celpage, Inc. v. FCC*, 120 S.Ct. 2212 (May 30, 2000), *cert. granted in GTE Service Corp. v. FCC*, 120 S.Ct. 2214 (June 5, 2000), (continued....)

components that are eligible for funding.²³ The Eligible Services List states that “video amplifiers and other video equipment necessary to deliver video services to the classroom are eligible for funding,” but that equipment used for video conferencing and end user equipment is ineligible for discount.²⁴ Upon review of the record, we are unable to determine which components of the Dukane SmartSystem were deemed ineligible for funding by SLD. Accordingly, we cannot ascertain whether the 30 percent policy was correctly applied in this case. For that reason, we remand Delano Union’s application and direct SLD to review the eligibility of the requested services.

8. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission’s rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed June 9, 2000, by Delano Union, Delano, California, IS GRANTED to the extent described herein. We direct SLD to review Delano Union’s funding application and, if warranted, to issue a revised Funding Commitment Decision Letter in accordance with the above-stated decision.

FEDERAL COMMUNICATIONS COMMISSION



Mark G. Seifert
Deputy Chief, Accounting Policy Division
Common Carrier Bureau

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cert. denied in AT&T Corp. v. Cincinnati Bell Tel. Co., 120 S.Ct. 2237 (June 5, 2000), *cert. dismissed*, *GTE Service Corp. v. FCC*, 121 S. Ct. 423 (November 2, 2000).

²³ See SLD’s website, (October 12, 2000), <http://www.sl.universalservice.org/reference/eligible.asp>.

²⁴ *Id.*